



Reviewed by Bicycle and Pedestrian Advisory Commission
on May 21, 2009

Council Meeting: June 2, 2009

SUBJECT: Ordinance Amending Sections of Chapter 10.56 of the Municipal Code Pertaining to Bicycles in Order to Conform to California's Vehicle Code

REPORT IN BRIEF

Staff recommends Council adopt revisions to Title 10 Vehicles and Traffic of the Sunnyvale Municipal Code as reflected in the accompanying ordinance. A number of Title 10, Chapter 56 provisions regarding bicycles are preempted by state law and thus, require amending. To avoid maintaining outdated provisions in the Municipal Code, the attached draft ordinance is recommended for adoption.

On April 16, 2009 the Bicycle and Pedestrian Advisory Committee (BPAC) held a public hearing and considered the draft report. After review, comment and public testimony, BPAC recommended staff's revision to the Municipal Code and two additional recommendations:

- The bicycle licensing program become voluntary instead of mandatory; and
- The expression "bicycle licensing" be changed to "bicycle registration".

Staff has incorporated into the proposed ordinance the recommendation that the licensing program be voluntary. However, the expression "bicycle licensing" has not been changed so as to remain consistent with the Vehicle Code.

On May 21, 2009, BPAC held a public hearing and considered the revised draft report. BPAC recommended staff's revision to the Municipal Code and in addition, made the following two recommendations:

- Licensing become voluntary for bicycle rentals; and
- The term "stunt riding" should be further defined, or if not, justification for its adequacy without a definition, or eliminated.

Staff has incorporated into the proposed ordinance both recommendations, and has defined stunt riding by referencing several related vehicle code provisions.

BACKGROUND

The Office of the City Attorney conducted a detailed analysis of Sunnyvale's Bicycle Code to ensure compliance with California's Vehicle Code provisions.

The following discussion and analysis elaborates on the proposed amendments to the Bicycle Code to conform to the state's Vehicle Code. The recommended revisions accompanying this RTC comply with applicable California Vehicle Code.

EXISTING POLICY

The current Sunnyvale Municipal Code 10.56 provides requirements for the licensing and operation of bicycles in the City of Sunnyvale, which was last updated in 2003.

DISCUSSION

A city may enact and enforce ordinances and regulations that are of municipal and of statewide concern; however, local regulations of statewide concern are invalid if they conflict with state law. Municipal codes which conflict with state law are preempted. This report discusses where local ordinances conflict with state law. A draft ordinance is attached as Exhibit B to conform local ordinances to state law.

Vehicle Code Preemption

"[Municipal] regulations in aid and furtherance of the purpose of the general law" are valid.¹ However, a state law preempts municipal law if (1) an actual conflict exists, and (2) the issue is of statewide concern. When state law preempts the municipal code, the municipal law is void.

Actual Conflict

A municipality may supplement state law when an actual conflict does not exist. An actual conflict arises when the local legislation duplicates, contradicts, or enters an area of law fully occupied by the state. When the state fully occupies the area, local authority cannot impose additional requirements without conflicting with state law.

While determining whether a provision duplicates or contradicts a state law is easily perceived, determining whether a state law fully occupies an area of law may be more difficult. State law is said to fully occupy an area of law if the legislature has made their intent to fully occupy an area of law clear.

The courts have held that the California legislature has made clear its intent to fully occupy the field of vehicular and pedestrian traffic control. Vehicle Code § 21 provides that "except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities herein, and no local authority shall enact or enforce any

¹ *Pipoly*, 20 Cal. 2d at 370 (citing *Mann v. Scott*, 180 Cal. 550, 556(1919)).

ordinance on the matters covered by the code unless expressly authorized herein.” (Emphasis added.)

The courts have discussed the state occupying the field of “traffic” control. Traffic is defined in Section 620 of the Vehicle Code to mean “pedestrian . . . vehicles . . . and other conveyances . . . while using any highway for purposes of travel” and includes bicycles. Assuming that state law fully occupies bicycle traffic control, a municipality is preempted from issuing ordinances regarding bicycle traffic control unless the Vehicle Code grants authority otherwise. However, a municipality can regulate areas outside of traffic control when the matter is not addressed by the Vehicle Code. Areas outside bicycle traffic control and not addressed by the Vehicle Code include bicycles on school grounds, bicycles on playgrounds, and some bicycle parking issues. While case law provides that parking on public streets is within traffic control, and thus fully occupied by the state, the state has granted local government authority to regulate many aspects of parking.

Statewide Concern

Traffic control has long been held by the courts to be a matter of statewide concern. Local bicycle regulations must conform to state law. Where the state has fully occupied the area of traffic control, a municipality cannot create any law in this area unless expressly granted the authority by the California Vehicle Code.

Application to Sunnyvale Municipal Code

State law preempts certain provisions of Sunnyvale’s Municipal Code regarding traffic control. However, the city may regulate areas not otherwise regulated by state law, so long as the municipal code does not contradict the Vehicle Code in matters of statewide concern. Such regulations would supplement the general law of the state.

Attached is a chart that illustrates those sections of Sunnyvale’s Bicycle Code that are (1) preempted and void because they either address an issue fully occupied by the state, contradict, or duplicate state law; (2) valid because the regulation is not regulated by state law; or (3) valid because the legislature has granted the municipality authority to regulate the subject matter.

Bicycle Licensing

The SMC currently uses the expression “bicycle licensing”. This term is consistent with Vehicle Code section 39001 et al, and therefore, staff recommends continuing to use the term licensing. The Vehicle Code specifically grants local agencies the authority to issue bicycle licenses, which city residents register for.

In addition, the proposed ordinance changes the bicycle licensing program from mandatory to voluntary for both residents and bicycle rental establishments. Making the program voluntary will continue to serve the goals expressed in SMC 10.56.020 while eliminating the potential stigma that results from individuals of other jurisdictions that do not require bicycle licensing. Currently, the SMC provides that all residents must obtain a bicycle license. However, DPS cannot readily determine whether a bicyclist without a license is a Sunnyvale resident who must obtain a license, or a non-resident just passing through Sunnyvale. DPS would need to inquire further, thus possibly stigmatizing non-residents who do not have license stickers. In addition, a mandatory licensing program may have a chilling effect on encouraging bicycling.

While the current mandatory licensing program complies with the Vehicle Code under section 39002, so does the recommended voluntary program. For the reasons addressed, staff has included in the accompanying ordinance the change to a voluntary licensing program.

Stunt Riding

Sunnyvale Municipal Code section 10.56.170 addresses stunt riding. BPAC recommended that the term stunt riding be further defined, so as to avoid vagueness and the ability to subjectively interpret the term resulting in multiple meanings. BPAC suggested that either the term remain without definition if its current adequacy could be justified, that a definition be provided (including possible reference to relevant Vehicle Code provisions), or that the code provision be eliminated.

Staff has amended the code provision to reference relevant Vehicle Code provisions including sections 21203, 21204, 21205, and 23103. These sections respectively address a prohibition on attaching a cyclist to a vehicle; riding other than on or astride a bicycle seat; operation of a bicycle while carrying articles that prevent at least one hand from being on the handlebars; and reckless driving which creates a willful or wanton disregard for the safety of persons or property.

FISCAL IMPACT

Approval of the proposed code revisions does not create a fiscal impact.

CONCLUSION

Title 10, Chapter 56 of the Municipal Code currently contains a number of provisions preempted by state law. Adopting the recommended revisions would amend the Municipal Code to include only those provisions permitted under the California Vehicle Code. The attached ordinance implements the necessary changes noted in the attached table.

Further, changing the licensing program from mandatory to voluntary will continue to serve the express goals of the program while eliminating the potential stigma and chilling effect a mandatory program may generate.

PUBLIC CONTACT

Public contact was made through posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the library and the City Clerk's Office. The Bicycle and Pedestrian Advisory Committee considered the draft report at its April 16 and May 21, 2009 meetings, which were open to the public.

ALTERNATIVES

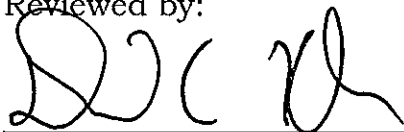
Council may consider the following alternatives:

1. Approve the proposed Bicycle Code revisions in their entirety and as submitted.
2. Approve the proposed Bicycle Code revisions in their entirety with modifications.
3. Reject some of the proposed Bicycle Code revisions and approve others without modification.
4. Reject some of the proposed Bicycle Code revisions and approve others with modification.
5. Reject the proposed Bicycle Code revisions in their entirety.

RECOMMENDATION

Staff recommends Alternative #1.

Reviewed by:

A handwritten signature in black ink, appearing to read 'DK' followed by a stylized flourish.

David E. Kahn, City Attorney

City Attorney's Office

Prepared by: Nicole Clemens, Special Deputy City Attorney

Attachments

- (A) SMC Chapter 10.56 Chart, illustrating the validity of the provisions
- (B) Proposed Ordinance amending Chapter 10.56 of the Sunnyvale Municipal Code to Conform to California's Vehicle Code

Attachment to RTC
SMC Chapter 10.56 Chart

SMC	Invalid and void	Valid, outside traffic control and not addressed by Veh. C.	Valid, legislature granted express authority to municipality
10.56.010			Valid reference to Veh. C. § 231 (not within city authority to define).
10.56.020			Veh. C. §§ 39001(a) and 39002 authorizes licensing of "bicycles" as defined under §39000.
10.56.030			Veh. C. §§ 39004 & 39005 authorizes various fees & record keeping; municipal code within Veh. C. limits.
10.56.040			Valid reference to Veh. C., as §39001(c) provides for renewal periods (not within city authority).
10.56.050	In part, re: removal of license, duplicative of §39002(b)		In part, Veh. C. §39002 authorizing license issuance
10.56.060		City can refuse to issue a license if bicycle determined unsafe – intertwined with licensing and within city authority	
10.56.080			Veh. C. § 39008 authorizing transfer of ownership ordinances
10.56.090	In part, preempted re: mutilation of bike frame serial numbers & licenses; covered by § 39002(b).	In part, valid re: DPS stamping numbers on the bike frame – not with regard to traffic control & intertwined with licensing. Serial numbers required on new bikes under Veh. C. § 39007.	

SMC	Invalid and void	Valid, outside traffic control and not addressed by Veh. C.	Valid, legislature granted express authority to municipality
10.56.100	Duplicative of Veh. C. § 39009 re: immediate notification if license destroyed and required application for duplicate license.		
10.56.110		Bike rental licensing not mentioned in Veh. C.; arguably within city's licensing authority expressly granted.	
10.56.120		Impounding bicycle under probable cause belief it stolen not addressed by Veh. C.	
10.56.130		In part, outside Veh. C. § 21201 which only addresses bicycle equipment for highways and roadways.	In part, within express authority under Veh. C. §§ 21100(h) & 21206 re: pedestrian and bike facilities and public sidewalks.
10.56.140			Within Veh. C. §§ 21100(h) & 21206 authority.
10.56.150		In part, outside Veh. C. § 21204 because applies to non-highway operation.	In part, within §§ 21100(h) & 21206 authority re: pedestrian and bike facilities and public sidewalks.
10.56.160	Preempted by Veh. C. § 22350.		
10.56.170	In part, re: highway stunt riding, preempted by state law; Veh. C. §§ 21203, 21204, & 21205 arguably covers.		In part, within §§ 21100(h) & 21206 authority re: non-highway ridings (pedestrian & bike facilities, and sidewalks).
10.56.180	Preempted by Veh. C. §§ 21804(a) (highway entry) & 21952 (sidewalk entry).		
10.56.200	In part, preempted by Veh. C. §§ 21203, 21204(b), & 21205.		In part, within Veh. C. §§ 21100(h) and 21206 authority re: pedestrian & bike facilities and sidewalks.

SMC	Invalid and void	Valid, outside traffic control and not addressed by Veh. C.	Valid, legislature granted express authority to municipality
10.56.210	Preempted, as within traffic control concerns. No Veh. C. equivalent, so therefore no limitations on group riding. However, Veh. C. § 21654 states that slow-moving vehicles must ride in the "right-hand lane for traffic or as close as practicable to the right-hand edge or curb."		
10.56.220	Preempted by Veh. C. § 21210 re: public sidewalk and §§ 22500 & 21211 re: roadways/bikeways. (Note: city can prohibit parking in designated areas on public highways if appropriate signs erected under Veh. C. § 21210 and local regulation of state highways permitted under Veh. C. § 22506.)		
10.56.230			Within Veh. C. § 22507(a) city authority to restrict vehicle parking during hours of the day on streets and highways. ¹
10.56.240	Preempted by Veh. C. §§ 21456.2. & 21462. In addition, re: pedestrians, duplicative of Veh. C. § 467 defining pedestrians, thus void.		
10.56.250		School grounds and playgrounds are non-highways and not addressed by Veh. C.	
10.56.260	In part, subjecting users of Class III bikeway to the rights and duties of operators of motor vehicles because duplicative with Veh. C. § 21200(a).		In part, city may establish bikeways under Veh. C. § 21207.
10.56.270			Within Veh. C. § 21207 authority.
10.56.280	Preempted under §§ 21208, 21209, 21717.		

¹ Arguably within city authority under Veh. C. § 21206 to regulate bike facilities (if would include parking zones), but unlikely because involves public streets. In addition, note that Veh. C. § 21210 allows city to prohibit bike parking on street.

SMC	Invalid and void	Valid, outside traffic control and not addressed by Veh. C.	Valid, legislature granted express authority to municipality
10.56.285		Valid, as a bike facility under § 21206; also, not within traffic control and no Veh. C. applicable.	
10.56.286			Streets and Highways Code § 891.2 authorizes.
10.56.290			Valid under DOT Traffic Regulations Chapter 8, Section 01.2
10.56.300			Valid under DOT Traffic Regulations Chapter 8, Section 01.2
10.56.310			Valid re: licensing fines under Veh. C. § 39011. Valid re: infraction violations within Veh. C. § 42001(d) and applicable limits of § 42001(a).

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AMENDING CERTAIN SECTIONS OF
CHAPTER 10.56 (BICYCLES) OF TITLE 10 (VEHICLES
AND TRAFFIC) OF THE SUNNYVALE MUNICIPAL CODE
UPDATING THE CODE RELATED TO BICYCLES**

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 10.56.005 ADDED. Section 10.56.005 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby added to read as follows:

10.56.005. California Vehicle Code—Reference. Enforcement of state laws.

The provisions of this Chapter shall supplement all laws of the state of California with regard to bicycle use. The City will enforce the applicable state laws in addition to and to the same extent as its enforcement of the provisions contained within the Sunnyvale Municipal Code.

Enforcement of the Sunnyvale Bicycle Code includes and adopts by reference the following California Vehicle Code provisions pursuant to Vehicle Code Section 21200(a): Division 11 (Section 21000 et seq.), Division 16.7 (Section 39000 et seq.), Division 10 (Section 20000 et seq.), Division 17 (Section 40000.1 et seq.), Division 18 (Section 42000 et seq.), and Division 12, Section 27400.

SECTION 2. SECTION 10.56.010 AMENDED. Section 10.56.010 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.010. Definitions.

For the purpose of this chapter, the word “bicycle” shall have the same meaning as that term is defined in the Vehicle Code Section 231 as the same exists or may be amended hereafter. References to the “chief of public safety” means the chief or the chief’s designee.

SECTION 3. SECTION 10.56.020 AMENDED. Section 10.56.020 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.020. Bicycle Licensing required.

~~It is unlawful in the city of Sunnyvale for a~~Any resident may register for a bicycle license with the City of Sunnyvale. ~~to operate a bicycle as defined in the California Vehicle Code unless it has been licensed and a current~~A license plate sticker will be provided and should be ~~is attached thereto~~to the bicycle, as provided in this chapter, ~~or unless it has been licensed by and bears a current license plate from another jurisdiction.~~ The term “license plate~~sticker~~” as used in

this chapter shall mean the indicia issued from time to time by the Department of Motor Vehicles. The chief of the department of public safety may issue a license as provided in this chapter for a bicycle owned by any resident of the city of Sunnyvale who applies therefor. The purpose of this section is to promote the safety and education of bicyclists, and to facilitate the return of stolen property to its owner. The absence of a bicycle license is not used as probable cause for random investigation.

SECTION 4. SECTION 10.56.030 AMENDED. Section 10.56.030 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.030. License—Issuance—Application—Fee—Record.

The chief of the department of public safety is authorized to issue bicycle licenses upon application therefor being made to the department of public safety and payment of the license fee of three dollars. For each bicycle license renewal or each transfer of license, and each replacement of a bicycle license or bicycle license platesticker, the fee shall be as established by resolution of the city council. The chief shall not issue a license for any bicycle when the chief knows, or has reasonable grounds to believe, that the applicant is not the owner of or entitled to the possession of such bicycle. The chief shall keep records in accordance with requirements as set forth in the Vehicle Code Section 39005.

SECTION 5. SECTION 10.56.040 AMENDED. Section 10.56.040 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.040. License—Duration.

Each bicycle license issued shall continue in effect until canceled or revoked, but in no event beyond January 1st of the third year following registration beginning January 1, 1979, at which time the license shall be renewed for time periods as set forth in the Vehicle Code Section 39001(c).

SECTION 6. SECTION 10.56.050 AMENDED. Section 10.56.050 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.050. License platesticker—Issuance—Attachment to bicycle.

Upon issuance of a bicycle license, the chief of the department of public safety or his designee shall also issue a license platesticker bearing the license number assigned to the bicycle. The chief shall cause such license platesticker to be firmly attached to the seat tube of the bicycle to which issued, in such a position as to be plainly visible from the front. ~~It is unlawful for an unauthorized person to remove a license plate from a bicycle.~~

SECTION 7. SECTION 10.56.090 AMENDED. Section 10.56.090 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.090. Bicycle frame or license plate Mutilation unlawful. Serial number—bicycle frame.

~~It is unlawful for any person to wilfully or maliciously remove, destroy, mutilate or alter the number of any bicycle frame licensed pursuant to this chapter. It is also unlawful for any person to remove, destroy, mutilate or alter any license plate during the time in which such license plate is in effect. Nothing in this chapter shall prohibit the department of public safety from stamping numbers on the frames of bicycles on which no serial number can be found, or on which the number is illegible or insufficient for identification purposes.~~

SECTION 8. SECTION 10.56.100 DELETED. Section 10.56.100 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby deleted as follows:

10.56.100. License plate loss or destruction—Destruction of bicycle.

~~In the event of the loss, destruction or mutilation of a license plate, the licensee shall report this fact to the chief of the department of public safety. Within ten days of such notification, the licensee shall apply for a duplicate license plate which shall be issued upon payment of the fee set forth in Section 10.56.030.~~

SECTION 9. SECTION 10.56.110 AMENDED. Section 10.56.110 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended as follows:

10.56.110. Rental bicycle—Licensinge required.

~~Every person engaged in the business of renting bicycles shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license may elect to obtain a license plate sticker is attached thereto for bicycles that are rented or offered, and All bicycles that are rented or offered for rent shall be the bicycle is equipped as required in this chapter.~~

SECTION 10. SECTION 10.56.130 AMENDED. Section 10.56.130 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended as follows:

10.56.130. Equipment.

~~On other than a public highway, which is regulated by California Vehicle Section 21201, every bicycle operated or used in the city of Sunnyvale shall be equipped with the items of equipment specified in the Vehicle Code Section 21201.~~

SECTION 11. SECTION 10.56.160 DELETED. Section 10.56.160 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby deleted as follows:

10.56.160. Speed.

~~It is unlawful for any person to operate a bicycle on a street or highway at a speed greater than is reasonable or prudent having due regard for the traffic on,~~

~~and the surface and width of, the street or highway, and in no event at a speed which endangers the safety of persons or property.~~

SECTION 12. SECTION 10.56.170 AMENDED. Section 10.56.170 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.170. Stunt riding prohibited.

It is unlawful for any person riding or operating a bicycle to perform or attempt to perform any acrobatic or stunt riding upon ~~any street or highway or other public place~~ public sidewalk, pedestrian facility, or bicycle facility that is not part of a street or highway. Stunt riding shall be defined as activity falling within Vehicle Code sections 21203, 21204, 21205, and 23103. This section is not meant to prohibit stunt riding as part of officially sanctioned events, or places clearly posting stunt riding as appropriate.

SECTION 13. SECTION 10.56.180 DELETED. Section 10.56.160 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby deleted as follows:

~~10.56.180. — Emerging from alley or driveway.~~

~~— The operator of a bicycle emerging from an alley, driveway or building, upon approaching the sidewalk area extending across any alley or driveway, shall yield the right of way to all pedestrians approaching on the sidewalk or sidewalk area, and upon entering the roadway shall yield the right of way to all vehicles approaching on the roadway close enough to constitute a hazard.~~

SECTION 14. SECTION 10.56.200 AMENDED. Section 10.56.200 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.200. Towing, pulling or pushing persons or objects prohibited

It is unlawful for any person operating a bicycle on a pedestrian facility, bicycle facility that is not part of a street or highway, or public sidewalk to tow or pull any person or object from the rear thereof, ~~—except attachments specifically designed for this purpose,~~ or push or propel any person or object in front of the bicycle, except with attachments specifically designed for this purpose.

SECTION 15. SECTIONS 10.56.210 and 10.56.220 DELETED. Section 10.56.210 and Section 10.56.220 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code are hereby deleted as follows:

~~10.56.210. — Group riding.~~

~~— It is unlawful for any persons operating bicycles upon a roadway to ride more than two abreast.~~

10.56.220. — Parking.

~~It is unlawful for any person to park, or allow to remain parked, any bicycle (1) upon any public street or roadway other than in such a manner that some portion of the bicycle touches the curb and so as to afford the least obstruction to vehicular traffic; or (2) upon any public sidewalk except in a bicycle rack, or against a building, or by means of a stand to maintain the bicycle in a vertical position, or at a curb, and in such a manner as to afford the least obstruction to pedestrian traffic.~~

SECTION 16. SECTION 10.56.240 DELETED. Section 10.56.240 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby deleted as follows:

10.56.240. — Obedience to traffic control devices.

~~It is unlawful for any pedestrian or person operating a bicycle to disobey the directions of any traffic control device on public or private property unless otherwise directed to do so by a public safety officer or unless it is unsafe to do so at the time. A pedestrian walking a bicycle has all the rights and is subject to all of the regulations applicable to pedestrians.~~

SECTION 17. SECTION 10.56.260 AMENDED. Section 10.56.260 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

10.56.260. Bicycle lanes, routes, and bikeways established.

The city council by resolution or motion may establish bicycle lanes and routes along designated streets or portions of streets. The city council by resolution or motion may establish bicycle paths in the interest of providing transportation, recreation and developing open space programs. The city council by resolution or motion may establish bikeways as defined in the Streets and Highways Code as the same exist or may be amended hereafter. ~~Any person operating a bicycle along a bicycle route or Class III bikeway as defined in the Streets and Highways Code shall be subject to all of the rights and duties applicable to the operators of motor vehicles generally along the streets or portions of streets so designated, such designation being intended only to inform the operators of bicycles that such streets or portions of streets afford an expeditious route of travel by bicycle, and to alert the operators of motor vehicles of the likelihood of a higher incidence of bicycle traffic where the roadway is so marked.~~

SECTION 18. SECTION 10.56.280 DELETED. Section 10.56.280 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby deleted as follows:

10.56.280. — Bicycle lanes — Class II bikeways — Use required and restricted.

~~When signs and markings are in place giving notice of the existence of any bicycle lane or Class II bikeway as defined in the Streets and Highways Code, it is unlawful for any person:~~

~~_____ (a) To operate a bicycle along any portion of the roadway of a street so designated other than within the bicycle lane or bikeway on the right side of the roadway, except for the purpose of passing another bicycle or to avoid an obstruction.~~

~~_____ (b) To operate any vehicle other than a bicycle along and within a bicycle lane or bikeway, except for the purpose of making a legal turning maneuver.~~

SECTION 19. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 20. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

SECTION 21. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 22. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2009, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2009, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

Date of Attestation: _____

SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney